



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GLENN A. OCKER,

Plaintiff,

v.

CAROLYN W. COLVIN, ACTING
COMMISSIONER OF THE SOCIAL
SECURITY ADMINISTRATION,

Defendant.^{1/}

Case No. EDCV 12-01510 AN

MEMORANDUM AND ORDER

Pursuant to the Court's Case Management Order, the parties have filed the Administrative Record ("AR") and a Joint Stipulation ("JS") raising two disputed issues. The parties have consented to proceed before the Magistrate Judge. The Court has carefully reviewed the parties' respective contentions in conjunction with the AR. This matter is now ready for decision.

///

///

///

///

///

^{1/} The Acting Commissioner is substituted as the defendant pursuant to Rule 25(d) of the Federal Rules of Civil Procedure. No further action is needed to continue this case by reason of the last sentence of 42 U.S.C. § 405(g).

Issue #1

Plaintiff contends that the Administrative Law Judge (“ALJ”) erred by rejecting the opinions of his treating physician, David R. Patterson, M.D., and examining psychologist, Laura Seibert, Ph.D., in the evaluation of Plaintiff’s physical and mental impairments. (JS 3-7, 11-12.)

Plaintiff, who is a podiatrist, suffered a brain aneurysm on February 27, 2007. (AR 22.) Following his discharge from the hospital, Plaintiff had a 24-hour a day caregiver for a period of time, and later received rehabilitation therapy and physical therapy. (AR 454.) Plaintiff’s medical records reflect that in the months following his brain aneurysm, Plaintiff experienced a number of physical and cognitive difficulties, including sleep apnea, headaches, bicep tenderness, rotator cuff tendonitis, colitis, and problems with left motor coordination, speech, short-term memory, executive functions, and gait (e.g., balance, speed, and dizziness while walking). (AR 455, 458, 465, 470, 476, 518, 619, 623, 625, 626, 631, 634, 645, 665, 667, 685, 710, 720, 819.) However, by November 2007, Dr. Patterson reported that Plaintiff’s prognosis was excellent. (AR 631.) Plaintiff was still forgetful at times and there was some delay in his responses, but there was no slowing of cognitive processes and his processing was fairly rapid. (AR 631.) Plaintiff’s motor examination was grossly functional, with some delay in left motor coordination. (AR 631.) Plaintiff had begun reviewing charts of new patients at his podiatry practice, but was not seeing patients. (AR 631.) By January 2008, one of Plaintiff’s doctors noted that Plaintiff had made a “remarkable recovery.” (AR 626.) Plaintiff’s symptoms of imbalance had resolved, and he was not experiencing headaches, difficulty chewing or swallowing, weakness in his extremities, pain, swelling, or tenderness. (AR 626.) While Plaintiff’s executive functions and short-term memory were still affected, his other cognitive functions were intact. (AR 626.) In February 2008, testing of Plaintiff’s vision, cognition, and physical functions demonstrated that Plaintiff was safe to resume driving. (AR 761.) In September 2008, Dr. Patterson reported that Plaintiff was working with supervision at his podiatry practice and was trying to regain staff privileges at his former

1 hospital. (AR 620.) Plaintiff's physical examination showed that his balance was intact,
2 his upper and lower extremities were neurovascularly intact, his sensory examination
3 was grossly functional, and his coordination was grossly functional. (AR 620.) By
4 August 2009, Dr. Patterson reported that Plaintiff was playing golf on a daily basis. (AR
5 993.) Plaintiff's physical examination and test results were normal, except for mildly
6 elevated triglycerides. (AR 993.) Dr. Patterson recommended that Plaintiff engage in a
7 home exercise program three times per week. (AR 993.)

8 Despite his findings on examination, Dr. Patterson assessed Plaintiff with
9 substantial work-related limitations in three attending physician's statements prepared
10 for an insurance carrier. (AR 955-60, 1119-20.) On December 13, 2008, Dr. Patterson
11 reported in an attending physician's statement of behavioral health that Plaintiff's brain
12 aneurysm resulted in "moderate" difficulty and a "partial restriction" in memory,
13 concentration, attention, problem solving, and executive functioning. (AR 955-57.) Dr.
14 Patterson opined that Plaintiff's limitations were cognitive based, but Plaintiff was
15 expected to return to full-time work on January 1, 2010. (AR 957.) However, in an
16 attending physician's statement of disability prepared little over a month later on January
17 27, 2009, Dr. Patterson reported that Plaintiff could perform "no work." (AR 960.) Dr.
18 Patterson found that Plaintiff could climb, balance, stoop, kneel, crouch, and crawl
19 "occasionally" (2.5 hours/day), and could sit, stand, and walk "frequently" (2.5. to 5.5
20 hours/day). (AR 959-60.) Dr. Patterson made identical findings as to Plaintiff's physical
21 limitations and inability to work in an attending physician's statement dated July 29,
22 2010. (AR 1119-20.)

23 In September 2010, Dr. Patterson completed a residual functional capacity
24 ("RFC") questionnaire. (AR 1122-23.) Dr. Patterson reported that Plaintiff suffered from
25 the following symptoms: poor coordination, loss of manual dexterity, difficulty solving
26 problems, problems with judgment, and speech/communication difficulties. (AR 1122.)
27 Dr. Patterson opined that these symptoms were severe enough to interfere with Plaintiff's
28 attention and concentration "frequently." (AR 1122.) While Dr. Patterson opined that

1 Plaintiff could tolerate low stress jobs, he explained that cognition, rather than stress,
2 restricted Plaintiff from returning to work. (AR 1123.)

3 Following the administrative hearing, the ALJ determined that Plaintiff suffers
4 from cognitive impairments as a result of his brain aneurysm. (AR 22.) Specifically, the
5 ALJ found that Plaintiff has reduced short-term recall and becomes easily frustrated. (AR
6 22.) The ALJ assessed Plaintiff with an RFC for work at all exertional levels, and
7 concluded that Plaintiff is able to “perform simple repetitive tasks learned by
8 demonstration,” “adapt to occasional changes in the workplace as long as they are
9 concrete in nature rather than abstract,” but “should avoid moving equipment, heights
10 and being in charge of safety operations of others.” (AR 29.) The ALJ rejected Dr.
11 Patterson’s opinion regarding Plaintiff’s limitations as set forth in the attending
12 physician’s statements and RFC questionnaire, to the extent those limitations conflicted
13 with the ALJ’s RFC assessment. (AR 26, 956-60, 1119-20, 1122-23.) The ALJ’s
14 evaluation of Dr. Patterson’s opinion was supported by substantial evidence. *See Lester*
15 *v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996).

16 The ALJ discounted Dr. Patterson’s opinion because it was not adequately
17 supported by clinical or treatment records. (AR 26); *see Connett v. Barnhart*, 340 F.3d
18 871, 875 (9th Cir. 2003) (doctor’s opinion properly rejected when treatment notes
19 “provide no basis for the functional restrictions he opined should be imposed”); *Thomas*
20 *v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) (“[t]he ALJ need not accept the opinion
21 of any physician, including a treating physician, if that opinion is brief, conclusory, and
22 inadequately supported by clinical findings”); *see also Batson v. Commissioner of Social*
23 *Security Administration*, 359 F.3d 1190, 1195 (9th Cir. 2004) (noting that “an ALJ may
24 discredit treating physicians’ opinions that are conclusory, brief, and unsupported by the
25 record as a whole, . . . or by objective medical findings”). As discussed above, Plaintiff
26 made a remarkable recovery after suffering a brain aneurysm in February 2007. (AR
27 626.) Plaintiff’s more recent physical examinations, sensory examinations, and
28 coordination functions were in the normal range. (AR 620, 993); *see Osenbrock v. Apfel*,

1 240 F.3d 1157, 1165 (9th Cir. 2001) (explaining that a treating physician's most recent
2 medical reports are highly probative); (AR 620.) Dr. Patterson's records did not show
3 objective findings consistent with his conclusion as to Plaintiff's limitations. Indeed, as
4 noted by the ALJ, Dr. Patterson's opinion that Plaintiff suffered from significant physical
5 limitations, including poor coordination and loss of manual dexterity, was inconsistent
6 with Plaintiff's admitted ability to play daily games of golf. (AR 26, 976, 993); *see* 20
7 C.F.R. § 404.1527(c)(4) (consistency of medical opinion with the record as a whole is
8 one of several factors considered in deciding the weight to give to any medical opinion);
9 *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 601-02 (9th Cir. 1999) (upholding
10 rejection of physician's conclusion that claimant suffered from marked limitations in part
11 on basis that claimant's reported activities of daily living contradicted that conclusion).

12 Further, the ALJ properly rejected Dr. Patterson's opinion in favor of the
13 conflicting opinion of the consultative examining neurologist who found that Plaintiff
14 had no limitations beyond those accounted for in the ALJ's RFC. (AR 26, 996); *see*
15 *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (consultative examiner's
16 opinion on its own constituted substantial evidence, because it rested on independent
17 examination of claimant); *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1989). The
18 testimony from the medical expert who reviewed Plaintiff's medical records also
19 constituted substantial evidence supporting the ALJ's decision, as it was consistent with
20 the medical evidence in the record. (AR 26-29, 51-63); *see Andrews*, 53 F.3d at 1041
21 ("reports of the nonexamining advisor need not be discounted and may serve as
22 substantial evidence when they are supported by other evidence in the record and are
23 consistent with it"); *Tonapetyan*, 242 F.3d at 1149. Any conflict in the properly
24 supported medical opinion evidence was the sole province of the ALJ to resolve.
25 *Andrews*, 53 F.3d at 1041.

26 Next, Plaintiff contends that the ALJ failed to adequately consider the opinion of
27 the examining psychologist, Dr. Seibert. (JS 5, 12.) Dr. Seibert examined Plaintiff in
28 November 2007 and August 2008. (AR 819-27, 1125-27.) In August 2008, Dr. Seibert

1 reported that due to Plaintiff's cognitive impairments, which consisted primarily of short-
2 term memory and executive functioning deficits, Plaintiff should not return to work at
3 his podiatry practice without supervision from another practitioner. (AR 825-26, 1126-
4 27.) Dr. Seibert also considered Plaintiff unsafe to drive even though one physician had
5 determined that Plaintiff was capable of driving. (AR 761, 826.) In March 2009, Dr.
6 Seibert completed an attending physician's statement for an insurance carrier. (AR 1125-
7 29.) Dr. Seibert opined that Plaintiff was "permanently disabled," as Plaintiff was unable
8 to perform any independent, clinical work and could not resume his pre-stroke
9 professional activities. (AR 1127.)

10 The ALJ thoroughly considered Dr. Seibert's opinion and gave it "considerable
11 weight." (AR 26.) The ALJ explained that Dr. Seibert's finding that Plaintiff was unable
12 to return to his former work as a podiatrist was consistent with the administrative
13 decision. (AR 26.) The ALJ accounted for Dr. Seibert's findings as to Plaintiff's short-
14 term memory and executive functioning deficits in Plaintiff's RFC assessment. (AR 25-
15 26, 29.) Further, the ALJ determined that Plaintiff had moderate restrictions in activities
16 of daily living and concentration. (AR 22-23.) Thus, the ALJ's evaluation of Dr.
17 Seibert's opinion is supported by substantial evidence.

18 Finally, Plaintiff contends that the ALJ erred by finding that Plaintiff's
19 impairments do not meet or equal the specifications of the impairments described in
20 section 12.02 for "Organic Mental Disorders." 20 C.F.R. Part 404, Subpt. P, App. 1, §
21 12.02. (JS 5, 12.) Specifically, Plaintiff asserts that he meets or equals the criteria set
22 forth in paragraph C of section 12.02, which provides as follows:

23 Medically documented history of a chronic [organic mental disorder or
24 affective disorder] of at least 2 years' duration that has caused more than a
25 minimal limitation of ability to do basic work activities, with symptoms or
26 signs currently attenuated by medication or psychosocial support, and one
27 of the following:

28 1. Repeated episodes of decompensation, each of extended duration; or

1 the extent, persistence, and limiting effect of his symptoms. For example, the ALJ found
2 that Plaintiff's reports to his physicians that he was playing golf on a daily basis
3 indicated that Plaintiff was living a lifestyle consistent with retirement and that he had
4 no intention of trying to perform some kind of work, such as rudimentary unskilled work.
5 (AR 25, 976, 993.) While a claimant need not "vegetate in a dark room," *Cooper v.*
6 *Bowen*, 815 F.2d 557, 561 (9th Cir. 1987), the Ninth Circuit also holds that "'where the
7 evidence is susceptible to more than one rational interpretation,'" the ALJ's decision
8 must be upheld if his interpretation was rational. *Burch v. Barnhart*, 400 F.3d 676, 680-
9 81 (9th Cir. 2005) (quoting *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989)).
10 Here, while Plaintiff reported some difficulty calculating his golf scores, the ALJ
11 properly considered Plaintiff's daily games of golf as inconsistent with his claim that his
12 impairments preclude him from being able to perform any kind of work. *Rollins v.*
13 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Smolen v. Chater*, 80 F.3d 1273, 1284
14 (9th Cir. 1996) (finding that the ALJ may additionally employ ordinary techniques of
15 credibility evaluation, such as weighing inconsistent statements regarding symptoms by
16 the claimant). In addition, Dr. Seibert recommended that Plaintiff undergo a
17 neuropsychological re-evaluation in August 2009 if he continued to aspire to return to
18 work. (AR 25, 826-27, 1126.) The ALJ found that Plaintiff never returned to Dr. Seibert
19 for a re-evaluation. (AR 25.) A rational reading of the record supports the ALJ's finding
20 that Plaintiff's golf activities and failure to seek a re-evaluation from Dr. Seibert were
21 inconsistent with his claim of disability. (AR 25); *Burch*, 400 F.3d at 680-81; *Smolen*,
22 80 F.3d at 1284.

23 The ALJ further found that the limiting effect of his symptoms on his daily
24 activities was not reasonably supported by the objective medical evidence. (AR at 24-
25 26.) The ALJ discussed the medical evidence in detail in the decision. (AR 24-29.) In
26 addition, the ALJ noted that Dr. Seibert did not find that Plaintiff was cognitively unable
27 to perform all types of work. (AR 25, 826.) Rather, Dr. Seibert actually recommended
28 that Plaintiff explore work-related activities. (AR 27, 826.) While subjective symptom

1 testimony cannot be rejected on the sole ground that it is not fully corroborated by
2 objective medical evidence, the medical evidence is still a relevant factor in determining
3 the severity of the claimant's pain and its disabling effects. 20 C.F.R. § 404.1529(c)(2);
4 *Rollins*, 261 F.3d at 857 (objective medical evidence may not be sole reason for
5 discounting credibility but is nonetheless a legitimate and relevant factor to be
6 considered in assessing credibility). Thus, the ALJ offered specific, clear and convincing
7 reasons, supported by substantial evidence for discounting Plaintiff's subjective
8 symptom testimony.

9 Accordingly, Plaintiff's second disputed issue does not warrant reversal of the
10 Commissioner's final decision.

11
12 **ORDER**

13 The Court finds that the ALJ's determination of non-disability is free of legal error
14 and supported by substantial evidence in the record. Therefore, Plaintiff's request for
15 an order directing the payment of benefits or remanding this case for further proceedings
16 is DENIED, and the Commissioner's request for an order affirming the Commissioner's
17 final decision and dismissing the action is GRANTED. The clerk shall enter judgment,
18 close the file and terminate all pending motions.

19
20
21 DATED: July 29, 2013



ARTHUR NAKAZATO
UNITED STATES MAGISTRATE JUDGE